

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

VICTOR ROBINSON,

Charging Party,

-v-

SEAN HARVEY and THE BEAR
PAW MOTEL,

Respondents.

Case # 0073012204-05

ORDER

Victor Robinson (Robinson) filed a complaint with the Department of Labor and Industry (Department) alleging that Sean Harvey and the Bear Paw Motel discriminated against him in public accommodations based on his race, Native American. Upon receiving the complaint, the Department determined that Robinson's complaint was untimely filed, at least for purposes of application of state law rather than federal law. The administrative process administered by the Department is the exclusive remedy for claims under Montana Code Annotated Title 49. The Department therefore issued a Notice of Dismissal.

Robinson filed an objection with the Montana Human Rights Commission (Commission) asserting both that he met the deadline because he mailed his complaint before the deadline and that the deadline should be extended for equitable reasons. Sean Harvey and the Bear Paw Motel argued that Robinson's complaint did not meet the deadline, that his appeal to the Commission was untimely, and that his brief was untimely. The Commission considered Robinson's appeal before the Commission to be timely filed because it was filed within 14 days of his signing for delivery of the notice of dismissal as delivered by certified mail.

The Commission considered Robinson's appeal on May 15, 2007. The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Mont. Code Ann. § 49-2-509(4) (2005); Admin. R. Mont. 24.9.1714(3)*. Issues of law are reviewed to determine if the Department's decision is correct. *Albright v. State* (1997), 281 Mont. 196, 205, 933 P.2d 815, 821. In this case, the alleged discrimination occurred on May 28, 2006. The deadline for the complaint was therefore November 24, 2006. Robinson filed on November 27, 2006. Although he mailed the complaint before the deadline, the Department's administrative rules require that filing is considered to be the date the complaint is received by the Department, not the date it was mailed. See ARM 24.8.201(3) ("A complaint is considered to be filed on the date it is received by the department, either by mail, hand-delivery or facsimile.") After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint is not an abuse of discretion and is correct.

Within 30 days of service of this order, a party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Admin. R. Mont. 24.9.1714(7); See also Mont. Code Ann. § 2-4-702; § 49-2-509(4)*.

IT IS HEREBY ORDERED, that Victor Robinson's objection is overruled. The Commission affirms the determination of the Department to dismiss the complaint alleging state law claims against Sean Harvey and the Bear Paw Motel.

DATED this ____ day of May, 2007.

Chair Ryan C. Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of May, 2007.

VICTOR ROBINSON
PO BOX 170
WALTHILL NE 68067

SEAN HARVEY
BEAR PAW MOTEL
114 MONTANA AVENUE
CHINOOK MT 59523

MARY VANBUSKIRK
BOSCH KUHR DUGDALE MARTIN & KAZE PLLP
PO BOX 7152
HAVRE MT 59501

Montana Human Rights Bureau